

The Earned Income Tax Credit (EITC): Legislation in the 113th Congress

Updated October 31, 2014

Congressional Research Service

<https://crsreports.congress.gov>

R43763

Summary

The Earned Income Tax Credit (EITC) is a refundable tax credit available to eligible workers earning relatively low wages. (Because the credit is refundable, an EITC recipient need not owe taxes to receive the benefit.) Under current law, the EITC is calculated based on a recipient's earnings, using one of eight different formulas, which vary depending on several factors, including the number of qualifying children a tax filer has (zero, one, two, or three or more) and his or her marital status (unmarried or married).

All else being equal, the amount of the credit tends to increase with the number of eligible children the claimant has. For example, the maximum value of the credit in 2014 is \$496 for claimants with zero children; \$3,305 for claimants with one qualifying child; \$5,460 for claimants with two qualifying children; and \$6,143 for claimants with three or more qualifying children. In addition, tax filers who have *no qualifying children* must be between 25 and 64 years of age to be eligible for the EITC. Childless taxpayers under 25 and older than 64 years of age are not eligible for the credit. (There is no age requirement for tax filers *with qualifying children*.)

This report discusses and analyzes legislative proposals introduced in the 113th Congress that propose modifying the EITC. Some of the bills include provisions to expand the credit for childless workers, by increasing the amount of the credit for these workers (through changes to the formula) and by expanding eligibility. Proposals that expand the credit for childless workers include the following:

- H.R. 4117, which would lower the age limit for childless workers to 21 and expand the size of the credit for childless workers, increasing the maximum credit to an estimated \$1,500;
- H.R. 2116, S. 836, and S. 2162, which would lower the age limit for childless workers from 25 to 21 and expand the size of the credit for childless workers, increasing the maximum credit to an estimated \$1,350;
- H.R. 2359, which would increase the size of the credit for childless recipients to an estimated \$1,300; and
- the Obama Administration's FY2015 budget, which would expand eligibility for childless workers to include those 21-67 years of age and expand the size of the credit for childless workers, increasing the maximum credit to an estimated \$1,000.

Some bills would also expand the credit for workers with qualifying children. H.R. 2116, S. 836, and the FY2015 Administration budget proposal would make the temporary 45% credit rate for families with three or more children permanent. In addition, H.R. 2320 would expand the EITC for tax filers with four, five, six, and seven or more qualifying children.

Chairman of the House Ways and Means Committee Dave Camp's tax reform proposal would reduce the amount of the EITC for most tax filers, although these reductions could be offset by other tax law changes made by the proposal.

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Introduction

The Earned Income Tax Credit (EITC) is a refundable tax credit available to eligible low-wage workers. Many low-income workers, especially those with children, can receive several thousand dollars of financial assistance from this tax provision. (Childless recipients can receive slightly less than \$500 if they qualify for the maximum credit.) Because the credit is refundable, an EITC recipient need not owe taxes to receive the benefit.¹

In the 113th Congress, many legislative proposals have been introduced that would modify the EITC. In general, these bills modify either how the credit is calculated or eligibility requirements for the credit, or both. To understand how these bills would modify the credit, this report first provides a brief overview of eligibility requirements for the credit and how the credit is calculated under current law. (For a more detailed description of EITC eligibility requirements and the calculation of the credit, see CRS Report RL31768, *The Earned Income Tax Credit (EITC): An Overview*, by Gene Falk.) The report then summarizes how different legislative proposals modify certain parameters of the credit, starting with modifications that expand the credit for workers *without qualifying children*, followed by those that expand the EITC for workers *with qualifying children*. (Some legislative proposals modify the credit for workers both with and without children.) Other modifications to the credit, including those made by House Ways and Means Committee Chairman Camp's tax reform proposal, are briefly summarized.

Overview of the EITC

Eligibility for and the amount of the EITC are based on a variety of factors, including residence and taxpayer ID requirements, the presence of qualifying children, age requirements for certain recipients, amount of investment income, and the recipient's earned income. This section briefly describes key eligibility factors and provides an overview of how eligible taxpayers calculate the value of the credit under current law.

Temporary Modifications to the EITC

Two temporary modifications to the EITC were enacted by the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5). First, ARRA enacted a temporary larger credit for families with three or more children by creating a new higher credit rate of 45% (previously, these tax filers were eligible for a credit rate of 40%). Second, ARRA expanded marriage penalty relief by increasing the earnings level at which the credit phased out for married tax filers in comparison to unmarried tax filers with the same number of children. Before ARRA, the EITC for married tax filers would begin to phase for earnings \$3,000 (adjusted for inflation) greater than the level for unmarried recipients with the same number of children. ARRA increased this differential to \$5,000 (adjusted for inflation). In 2014, this marriage penalty relief was equal to \$5,430.

These two changes were originally scheduled to be in effect for tax years 2009 and 2010 only. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) extended these ARRA provisions for two years (2011 and 2012). The American Taxpayer Relief Act (ATRA; P.L. 112-240) subsequently extended the ARRA provisions for five more years (2013-2017). Hence, under current law, beginning in 2018 the larger credit for families with three or more children will expire and the marriage penalty relief will be reduced from \$5,000 (adjusted for inflation) to \$3,000 (adjusted for inflation). (Families with three or more children will still be able to claim the credit for families with two or more children beginning in 2018.)

¹ Any amount of the credit that is greater than a recipient's tax liability is claimed as a refund on the income tax return.

Eligibility for the EITC

There are a variety of eligibility criteria for the EITC, described below.

Residence and ID Requirements: Under current law, an EITC recipient must be a resident of the United States, unless the recipient resides in another country because of U.S. military service. In addition, to be eligible for the credit, the tax filer must provide valid Social Security numbers (SSNs) for work purposes² for themselves, spouses if married filing jointly, and any qualifying children.

Definition of Qualifying Child: To be considered a “qualifying child” of an EITC recipient, three requirements must be met. First, the child must have a specific *relationship* to the tax filer (son, daughter, step child or foster child, brother, sister, half-brother, half-sister, step brother, step sister, or descendent of such a relative). Second, the child must share a *residence* with the taxpayer for more than half the year in the United States. Third, the child must meet certain *age requirements*; namely, the child must be under the age of 19 (or age 24, if a full-time student) or be permanently and totally disabled.

Age Requirements for EITC Recipients with No Qualifying Children: If a tax filer has *no qualifying children*, he or she must be between 25 and 64 years of age. Childless taxpayers under age 25 or older than 64 are not eligible for the EITC. There is no age requirement for tax filers *with qualifying children*.

Investment Income: Tax filers with investment income greater than \$3,350 in 2014 are ineligible for the EITC. Investment income includes interest income (including tax-exempt interest), dividends, net rent, and royalties that are from sources other than the filer’s ordinary business activity, net capital gains, and passive income.

Calculating the Credit

The EITC is calculated based on a recipient’s earnings.³ Specifically, the EITC equals a fixed percentage (the “credit rate”) of earned income until the credit amount reaches its maximum level. The EITC then remains at its maximum level over a subsequent range of earned income, between the “earned income amount” and the “phase-out amount.” Finally, the credit gradually decreases in value to zero at a fixed rate (the “phase-out rate”) for each additional dollar of earnings⁴ above the phase-out amount. The specific values of these EITC parameters (i.e., credit rate, earned income amount, etc.) vary depending on the several factors, including the number of qualifying children and the marital status of the tax filer, as illustrated in **Table 1**.

² For more information on Social Security numbers valid for work purposes, see CRS Report WSLG823, *Social Security Number or Individual Taxpayer Identification Number for Tax Credit? That is the Question*, by Emily M. Lanza, Erika K. Lunder, and Kathleen S. Swendiman and CRS Report WSLG723, *They’ve Got Your Number: Who Can Get A Social Security Card*, by Kathleen S. Swendiman.

³ Earned income for calculation of the credit includes wages, tips, and other compensation included in gross income and self-employment income after the deduction for self-employment taxes. Earned income does not include pension or annuity income, income for nonresident aliens not from a U.S. business, income earned while incarcerated (for work in prison), and TANF benefits received while a TANF assistance recipient participates in work experience or community service activities. Although gross (and earned) income for tax purposes does not generally include certain combat pay earned by members of the Armed Forces, members of the Armed Forces may elect to include combat pay for purposes of computing the earned income tax credit.

⁴ The phase out of the credit is calculated using earnings or adjusted gross income (AGI), whichever is greater. For more information, see CRS Report RL31768, *The Earned Income Tax Credit (EITC): An Overview*, by Gene Falk.

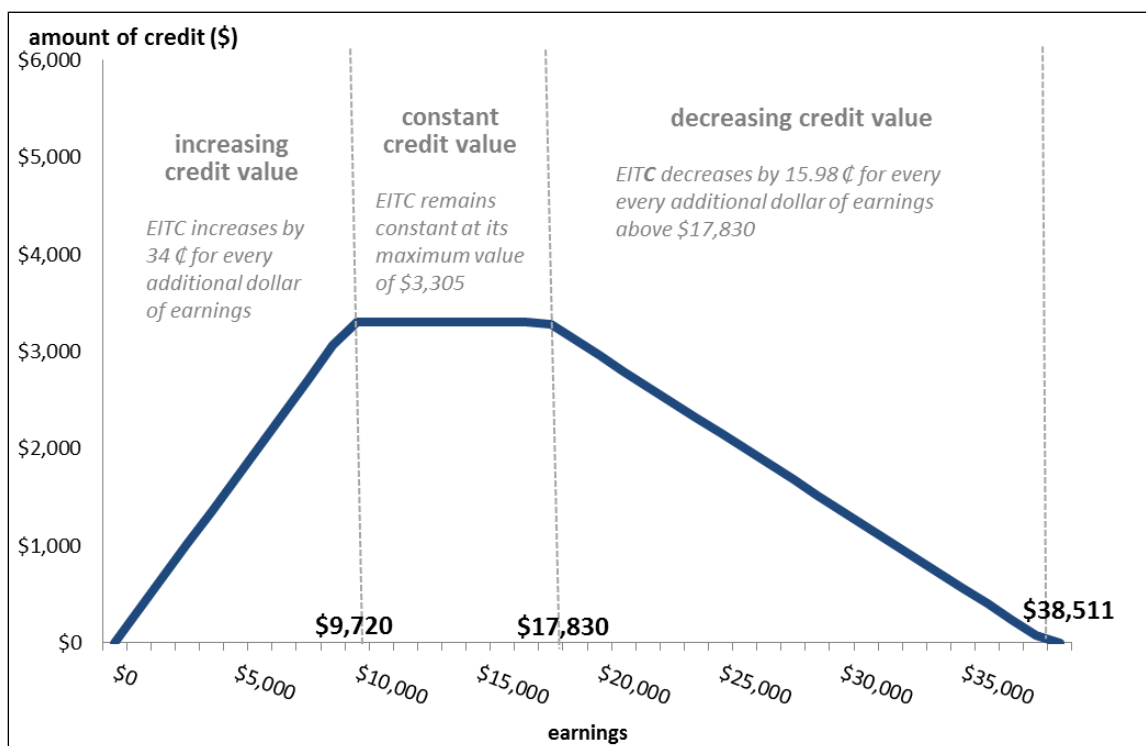
Table 1. The Value of the EITC by Number of Qualifying Children and Marital Status, 2014

Number of qualifying children	0	1	2	3 or more
Unmarried tax filers (single and head of household filers)				
credit rate	7.65%	34%	40%	45%
earned income amount	\$6,480	\$9,720	\$13,650	\$13,650
maximum credit amount	\$496	\$3,305	\$5,460	\$6,143
phase-out amount	\$8,110	\$17,830	\$17,830	\$17,830
phase-out rate	7.65%	15.98%	21.06%	21.06%
income where credit = 0	\$14,590	\$38,511	\$43,756	\$46,997
Married tax filers (married filing jointly)				
credit rate	7.65%	34%	40%	45%
earned income amount	\$6,480	\$9,720	\$13,650	\$13,650
maximum credit amount	\$496	\$3,305	\$5,460	\$6,143
phase-out amount	\$13,540	\$23,260	\$23,260	\$23,260
phase-out rate	7.65%	15.98%	21.06%	21.06%
income where credit = 0	\$20,020	\$43,941	\$49,186	\$52,427

Source: IRS Revenue Procedure 2013-35 and Internal Revenue Code (IRC) §32.

Figure 1 provides a graphic representation of the amount of the EITC for an unmarried EITC recipient with one child in 2014. As illustrated in **Figure 1** (and in the “one qualifying child” column in **Table 1** for unmarried tax filers), the credit phases in at a rate of 34% of earnings for tax filers with earnings under \$9,720 in 2014. At \$9,720 of earnings, the EITC reaches its maximum level of \$3,305 and remains at that level until earnings exceed \$17,830. For taxpayers with earnings above this threshold, the \$3,305 amount is gradually reduced by 15.98 cents for every dollar above \$17,830. Unmarried tax filers with one child and earnings at or above \$38,511 are ineligible for the EITC.

Figure 1. Amount of the EITC for an Unmarried Worker with One Qualifying Child, 2014



Source: CRS calculations based on IRC § 32, IRS Revenue Procedure 2013-35

Legislation That Expands the Credit for Childless Workers

Several bills introduced in the 113th Congress would expand the EITC for childless workers. These bills—H.R. 4117, H.R. 2116, S. 836, S. 2162, H.R. 2359, and the Obama Administration's FY2015 budget—would modify how the credit is calculated, increasing the amount of the credit for childless workers. All of these bills—except H.R. 2359—would also modify various eligibility rules for the credit, expanding the number of taxpayers eligible to claim it. These legislative changes are summarized below in **Table 2** and described subsequently in this report.

Table 2.A Comparison of Legislative Proposals to Expand the "Childless EITC"

Parameter	Current Law in 2014	H.R. 4117	H.R. 2116	S. 836	S. 2162	H.R. 2359	FY2015 Budget
Amount of Credit^a							
Credit rate	7.65%	23.15%	15.3%	15.3%	15.3%	20%	15.3%
Phase-out rate	7.65%	23.15%	15.3%	15.3%	15.3%	7.65%	15.3%
Earned income amount	\$6,480	\$6,480	\$8,820	\$8,820	\$8,820	\$6,480	\$6,480
Phase-out amount ^b	\$8,110	\$16,630	\$10,425	\$10,425	\$10,425	\$8,110	\$11,500 ^c

Parameter	Current Law in 2014	H.R. 4117	H.R. 2116	S. 836	S. 2162	H.R. 2359	FY2015 Budget
Marriage penalty relief	\$5,430 (\$5,000 statutory amt)	\$8,000 (statutory amt)	\$5,000 (statutory amt)	\$5,000 (statutory amt)	\$5,000 (statutory amt) ^d	\$5,000 (statutory amt) ^d	\$5,000 (statutory amt)
Eligibility Rules							
Eligibility age for childless EITC	25-64 years	21-64 years	21-64 years (except full-time students) ^e	21-64 years	21-64 years (except full-time students) ^e	25-64 years	21-67 years (except full-time students) ^e
Allowing tax filers who do not provide all qualifying children's SSNs to claim childless EITC	No ^f	No	Yes	Yes	No	No	No
Allowing tax filers who do not claim their qualifying child to claim EITC for childless workers	No	No	Yes (parental exception) ^g	Yes (parental exception) ^g	No	No	Yes ^h

- The monetary figures in this table reflect the changes made to statutory levels. The actual inflation-adjusted monetary amounts are not provided because each bill's formula to adjust these parameters differs slightly. For more information on the formulas used to adjust these monetary figures for inflation, see the **Appendix**.
- This is the phase-out amount for unmarried EITC recipients. The phase-out amount for married EITC recipients is calculated by taking the phase-out amount for unmarried recipients and adding the appropriate amount of "marriage penalty relief."
- This reflects 2015 levels, as provided by the Treasury Department.
- From 2014 to 2017, the differential in the threshold amount between unmarried and married EITC recipients is \$5,000 indexed for inflation (\$5,430 in 2014). This is a temporary increase enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5). Upon its scheduled expiration, this differential will fall to \$3,000 (indexed for inflation). H.R. 2116 and S. 836 extend the ARRA differential permanently, but S. 2162 and H.R. 2359 do not.
- This bill would lower the minimum age requirement for the childless EITC from 25 to 21, as long as the worker is not a full-time student. The full-time student limitation does not apply for those 25-64 or 25-67 in the case of the FY2015 budget.
- Under current law, tax filers who do not provide the SSNs of all of their otherwise eligible qualifying children when claiming the EITC will be ineligible for the credit—including the credit for childless workers.
- If a qualifying child lived with unmarried parents at the same address for the year, and one parent claimed the child for the EITC, the other parent they lived with (i.e., the custodial parent) could not claim the childless EITC.
- The description of this proposal does not include a description of a parental exception to this allowance.

Increasing the Amount of the Credit

A variety of legislative changes made to the formula used to calculate the EITC for childless workers would increase the amount of the credit. Generally, these bills would increase a variety of different parameters, including the credit rate, the earned income amount, and the phase-out income level. As illustrated in **Figure 2** and **Figure 3**, these changes would generally increase the maximum value of the credit for childless workers from \$496 to approximately \$1,000

(Administration budget proposal); \$1,300 (H.R. 2359); \$1,350 (H.R. 2116, S. 836, S. 2162); or \$1,500 (H.R. 4117).

Figure 2. The Value of the “Childless” EITC in 2014 for Unmarried EITC Recipients under Selected Legislation in the 113th Congress

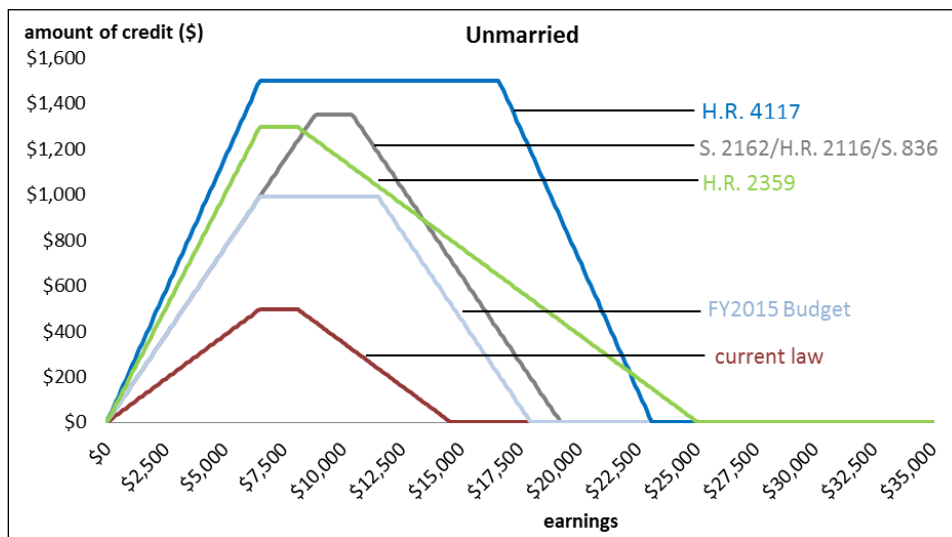
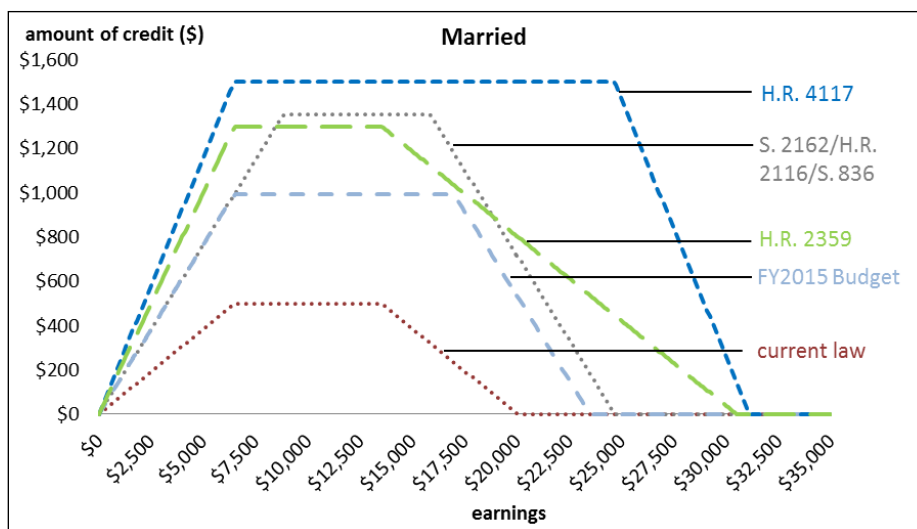


Figure 3. The Value of the “Childless” EITC in 2014 for Married EITC Recipients under Selected Legislation in the 113th Congress



Source: CRS calculations based on IRC § 32, IRS Revenue Procedure 2013-35, H.R. 4117, S. 2162, H.R. 2116, S. 836, H.R. 2359, and the Administration’s FY2015 budget.

Notes: The values of the EITC for tax filers without qualifying children under these legislative proposals are approximations and would likely differ slightly if these bills were to become law, due to inflation adjustments included in the legislation.

Increasing the Credit Rate

Under current law, the credit rate for childless EITC recipients is 7.65%. All else being equal, increasing the credit rate would increase the amount of the credit.

- Under **H.R. 4117**, the credit rate for childless workers would increase to 23.15% (the phase-out rate would also increase from 7.65% to 23.15%).
- Under **H.R. 2359**, the credit rate for childless workers would increase to 20% (the phase-out rate would remain at its current level of 7.65%).
- Under **H.R. 2116, S. 836, S. 2162**, and the **FY2015 Administration budget proposal**, the credit rate for childless workers would double to 15.3% (the phase-out rate would also increase from 7.65% to 15.3%).

Increasing the Earned Income Amount

As previously discussed, the “earned income amount” is the earnings level at which the credit reaches its maximum value. All else being unchanged, increasing the earned income amount increases the amount of the credit for most EITC claimants. For example, under current law, the earned income amount for a childless EITC claimant is \$6,480. If the earned income amount was increased to \$10,000 (and all other parameters of the credit remained unchanged from current law), all tax filers with income above the current earned income threshold of \$6,480 would receive a larger credit. The maximum value of the credit would increase from \$496 to \$765.

Under **H.R. 2116**, the earnings level at which the childless EITC reaches its maximum value would increase from its current level of \$6,480⁵ to \$8,820 (adjusted annually for inflation).

A Note About Monetary Figures Described in Selected Legislation

Many of the legislative proposals described in this report, especially those that expand the EITC for childless workers, include changes to the earned income amount, phase-out amount, and marriage penalty relief of the EITC. These bills generally set a new statutory level for these amounts and then direct the Internal Revenue Service (IRS) to annually adjust these levels in subsequent years for inflation. Because most of the bills—if enacted—would go into effect in 2014 or 2015, these statutory changes to monetary parameters are generally compared in this report with equivalent 2014 inflation-adjusted parameters to provide a more accurate comparison of the changes these bills would make. For example, if H.R. 4117 were passed in 2014, the legislative changes in that bill, including increasing the phase-out amount to \$16,830, would be in effect in 2014 and subsequently in later tax years adjusted for inflation. Hence, this report compares that \$16,830 threshold phase-out amount described in the legislation to the amount that is in effect in 2014 under current law, \$8,110, and not the statutory (unadjusted for inflation) phase-out amount of \$5,280.

In addition, the formulas used to adjust the monetary parameters of the EITC for inflation (earned income, phase-out, and marriage penalty parameters) differ from bill to bill. Hence, the actual values of monetary parameters under these bills if they were enacted may differ slightly from the amounts described below. For more information on how these parameters could be adjusted for inflation if selected legislation were to become law, see the **Appendix**.

Increasing the Phase-Out Amount and Marriage Penalty Relief

The EITC phases out for recipients when income exceeds a “phase-out amount.” Increasing the phase-out amount increases the credit amount for tax filers whose income places them in the downward sloping “phase-out range” of the credit (see **Figure 1** for an illustration of the “phase-out range”). Under current law, the phase-out amount for unmarried tax filers is specified by law

⁵ Statutorily, the earned income amount is set at \$4,220, adjusted annually for inflation. In 2014, the inflation-adjusted level is \$6,480.

and the phase-out amount for married tax filers is calculated by adding the applicable amount of marriage penalty relief. (For example, as illustrated in **Table 1**, the phase-out amount for married taxpayers with a given number of children is calculated by adding \$5,430—the current level of “marriage penalty relief”—to the phase-out amount for unmarried recipients with the same number of children.) Beginning in 2018, this marriage penalty relief is scheduled to revert permanently to \$3,000 (adjusted for inflation).

- **H.R. 4117** would increase both the phase-out amount and marriage penalty relief. Specifically, the bill would increase the phase-out amount from its current level of \$8,110 for unmarried tax filers⁶ to \$16,630 (and subsequently adjust this amount for inflation in future years).⁷ For childless workers only, this bill would also increase marriage penalty relief permanently to \$8,000 (adjusted for inflation).
- **H.R. 2116** would increase the phase-out amount for unmarried recipients to \$10,425 (and adjust this amount annually for inflation). The 2009 temporary increase in the marriage penalty relief of \$5,000 (adjusted for inflation, \$5,430 in 2014) would also be made permanent.
- **The President’s FY2015 budget** would increase the phase-out amount for unmarried tax filers⁸ to \$11,500 in 2015. These levels would be annually adjusted for inflation in the future. Like H.R. 2116, the 2009 temporary increase in the marriage penalty relief would be made permanent.⁹

Changing Eligibility Rules

A variety of legislative changes made to the eligibility rules of the EITC for childless workers would expand eligibility for the credit to more childless workers.

Changing the Eligibility Age for the Childless EITC

Currently, childless workers must be between the ages of 25 and 64 to be eligible for the childless EITC.

- **H.R. 4117** and **S. 836** would lower the minimum age requirement for the childless EITC from 25 to 21, leaving the maximum age limitation unchanged.
- **H.R. 2116** and **S. 2162** would also lower the minimum age requirement for the childless EITC from 25 to 21. However, eligible workers between the ages of 21 and 24 could not be full-time students. The maximum age limitation would remain unchanged.
- **The Obama Administration’s FY2015 budget proposal** would expand eligibility for both younger and older childless workers. Specifically, the proposal

⁶ The statutory threshold is set to \$5,280. Adjusted for inflation in 2014, it equals \$8,110. See IRS Revenue Procedure 2013-35, <http://www.irs.gov/pub/irs-drop/rp-13-35.pdf>.

⁷ Under this bill, the earnings level at which the childless EITC reaches its maximum value (known as the “earned income amount” would equal its current 2014 level (the statutory level of \$4,220 adjusted for inflation) of \$6,480.

⁸ The statutory threshold is set at \$5,280. Adjusted for inflation in 2014, it equals \$8,110. See IRS Revenue Procedure 2013-35, <http://www.irs.gov/pub/irs-drop/rp-13-35.pdf>.

⁹ The Treasury estimates that in 2015 the marriage penalty relief, when adjusted for inflation, would be \$5,500. In 2014, the marriage penalty relief is \$5,430.

would “allow tax filers at least aged 21 and under 67 years old to claim the EITC for workers without qualifying children.”^{10,11} Full-time students between the ages of 21 and 24 would remain ineligible for the EITC.

Allowing Tax Filers Whose Children Do Not Have Social Security Numbers (SSNs) to Receive the Childless EITC

Under current law, tax filers with qualifying children must provide those children’s SSNs (as well as their own). If tax filers do not provide the SSNs of all of their otherwise qualifying children when they claim the EITC, the tax filers will be ineligible for the EITC—even the EITC for childless workers. (By contrast, if tax filers provide the SSNs of some *but not all* of their qualifying children, the IRS will recalculate the filers’ EITC credit value based on the number of qualifying children with SSNs.)

H.R. 2116 would allow tax filers to receive the childless EITC if the tax filer does not provide the SSNs of *all* of their otherwise qualifying children.

Simplifying the Rules Regarding the Presence of a Qualifying Child to Allow Certain Tax Filers to Claim the Childless EITC

Under current law, for the purposes of the EITC, qualifying children must meet three requirements: (1) they must be relatives¹² of the tax filer, (2) they must live with the tax filer for more than half the year in the United States, and (3) they must be under 19 years old (or 24, if a full-time student).¹³ As a result of this definition, a child may be the qualifying child of more than one tax filer in the household. For example, a child who lives with a single parent, grandparent, and aunt in the same house could be a qualifying child of all three of these individuals. But only one of these individuals can claim the qualifying child for the EITC, and the others are barred from claiming the childless EITC.

Specifically, the IRS states, “If you have a qualifying child and do not claim the EITC using that qualifying child, you cannot take EITC for those who do not have a qualifying child.”¹⁴ In other words, you cannot claim the EITC for childless workers if you in fact *do have a qualifying child*, but *do not claim them* for the EITC. For example, in the situation where a grandparent or aunt claims their qualifying grandchild or niece/nephew for the EITC, the child’s parent—even if the parent lives with the child and that child is also their qualifying child—could not claim the EITC for childless workers.

- **H.R. 2116** would allow certain tax filers who did not claim their qualifying child for the EITC (and whose qualifying child was claimed by another tax filer for the EITC) to claim the EITC for childless workers. This rule would *not apply* if the

¹⁰ Department of the Treasury, *General Explanations of the Administration’s Fiscal Year 2015 Revenue Proposals*, March 2014, p. 140, <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2015.pdf>.

¹¹ If two childless tax filers were married and filed their taxes jointly, they would be eligible for the EITC for childless workers if either spouse were at least 21 or under 67 years of age.

¹² Specifically, the child must be a son, daughter, step child or foster child (if placed by an authorized agency or court order), brother, sister, half-brother, half-sister, step brother, step sister, or descendent of such a relative. For more information, see CRS Report RL31768, *The Earned Income Tax Credit (EITC): An Overview*, by Gene Falk.

¹³ The age requirement is waived if the qualifying child is permanently and totally disabled. For more information, see CRS Report RL31768, *The Earned Income Tax Credit (EITC): An Overview*.

¹⁴ For more information, see <http://www.irs.gov/Individuals/Qualifying-Child-of-More-Than-One-Person>.

qualifying child lived with both parents. Hence, if a child lived with their grandmother, aunt, and mother at the same address for the year, and the grandmother claimed the child for purposes of the EITC, both the aunt and mother could claim the childless EITC under this bill. In contrast, according to this legislation, if the child lived with both unmarried parents at the same address for the year, and one parent claimed the child for the EITC, the other parent *could not* claim the childless EITC.

- **The Obama Administration's FY2015 budget**, like H.R. 2116, proposes simplifying the rules regarding the presence of a qualifying child. According to the Treasury's description of the proposal, this change "would allow otherwise eligible tax filers residing with qualifying children whom they do not claim to receive the EITC for workers without qualifying children."¹⁵

Legislation That Expands the Credit for Workers with Qualifying Children

There are several bills introduced in the 113th Congress that would expand the EITC for workers with qualifying children. Several of these bills—H.R. 2116, S. 836, H.R. 2320, and the Obama Administration's FY2015 budget—would make the larger credit for families with three or more children, enacted temporarily as part of the American Recovery and Reinvestment Act (ARRA; P.L. 111-5), permanent. H.R. 2320 would also expand the EITC for tax filers with four, five, six, and seven or more qualifying children. H.R. 2116 also includes a provision to enable certain separated spouses with children to claim the credit. Finally, S. 2162 includes a proposal that would allow dual-earner couples *with at least one child* to reduce their earned income if it would result in a larger credit.

Increasing the Amount of the Credit

The value of the EITC depends on the credit rate. Under current law, the credit rate increases based on the number of qualifying children an EITC recipient has, up to three qualifying children. The current credit rates for EITC recipients with one, two, and three or more qualifying children are 34%, 40%, and 45%, respectively. Before 2009, there were two credit rates for EITC recipients with qualifying children: one for those with one qualifying child (34%) and one for those with two or more qualifying children (40%). The American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5) created a new increased credit rate of 45% (and hence larger credit) for families with three or more children. This modification was extended several times on a temporary basis. Most recently it was extended through the end of 2017 by the American Taxpayer Relief Act (ATRA; P.L. 112-240). All else being equal, increasing the credit rate results in a larger credit.

- **H.R. 2116, S. 836, and the FY2015 Administration budget proposal** would make the 45% credit rate for families with three or more children permanent.
- **H.R. 2320** would expand the EITC for tax filers with four, five, six, and seven or more qualifying children by increasing the credit rate, as illustrated in **Table 3**.

¹⁵ Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals*, March 2014, p. 249, <http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2015.pdf>.

Table 3. Change in EITC Credit Rate and Credit Amount under H.R. 2320

Number of Qualifying Children	Current Law		H.R. 2320	
	Credit Rate	Max Credit (2014)	Credit Rate	Max Credit (2014)
0	7.65%	\$496	7.65%	\$496
1	34%	\$3,305	34%	\$3,305
2	40%	\$5,460	40%	\$5,460
3	45%	\$6,143	45%	\$6,143
4	45%	\$6,143	50%	\$6,825
5	45%	\$6,143	55%	\$7,508
6	45%	\$6,143	60%	\$8,190
7 or more	45%	\$6,143	65%	\$8,873

Source: H.R. 2320. IRC §32 and IRS Revenue Procedure 2013-35.

Changing the Separated Spouse Rule

Under current law, married tax filers generally have only two options when they file their tax returns: they can file a joint return (married filing jointly) or they can file a separate return (married filing separately). Even in cases where legally married spouses live apart (like separation), the spouses generally cannot file their income taxes using another status like single or head of household.

Currently, only those married tax filers who file jointly may claim the EITC. However, a separated spouse with a qualifying child (or children) may be able to claim the EITC as an unmarried tax filer (using the head of household filing status) if he or she fulfills three rules.

First, the separated spouses must have lived apart for the last six months of the year. Second, the separated spouse claiming the EITC must have lived with the qualifying child (or children) for more than six months of the year. Third, the separated spouse claiming the EITC must meet the “household maintenance test.”¹⁶ This test requires tax filers to show that they pay *more than half* of household expenses¹⁷ from their own income. Child support payments and public program benefits *do not count* as part of their own income. This “household maintenance test” may limit the ability of a poor working separated spouse with children—who may receive a significant amount of income from child support and public benefits—from claiming the EITC for unmarried individuals.

H.R. 2116 would allow certain married tax filers who are living separately to claim the EITC without needing to meet the requirements of the “household maintenance test.” Specifically, if a married individual resides with the couple’s qualifying children for more than half the year and *either* has a legally binding separation agreement *or* lives apart from a spouse for the last six months of the year, he or she may claim the EITC as an unmarried individual with qualifying

¹⁶ This test can be found in IRC § 7703.

¹⁷ Per reg. §1.7703-1(b)(4), household expenses (i.e., the “cost of maintaining a household”) include expenditures for property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance and food consumed on the premises. They do not include the cost of clothing, education, medical treatment, vacations, life insurance and transportation, or the value of services rendered in the home by either the taxpayer or the dependent.

children. If the other spouse does not live with a qualifying child, he or she remains ineligible for the EITC, including the EITC for childless workers.

Allowing Tax Filers to Increase the Credit Amount by Deducting the Income of the Lesser-Earning Spouse

Under current law, married EITC recipients calculate the value of their credit based on their combined earnings. Dual-earner families may find that their combined income pushes them into the phase-out range of the credit (see **Figure 1** for a graphical representation of the phase-out range), resulting in a smaller credit in comparison to the combined amount of the credits of two unmarried EITC recipients. In these cases, reducing the recipient's earned income for purposes of calculating the EITC could yield a larger credit.

S. 2162 includes a proposal that would allow dual-earner couples *with at least one child* to reduce their earned income for the purposes of calculating the EITC. This provision—the “dual earner deduction”—would allow the tax filer to reduce earnings by an amount equal to 20% of the earned income of the spouse with the lesser earnings, up to a maximum deduction of \$12,000.¹⁸ For example, if a married couple with one child earned \$25,000 and \$10,000 respectively, their earnings amount for purposes of calculating the EITC would be \$35,000 under current law. If they applied the dual-earner deduction, their earnings would instead be \$33,000 (\$25,000 plus \$8,000), which would result in a larger EITC. Specifically, in 2014, this couple's EITC would be \$1,749 using the dual-earner deduction, instead of \$1,429 without the deduction.¹⁹

Other Legislative Changes

Several bills, including H.R. 4117, H.R. 2116, and Chairman Camp's tax reform proposal, include changes to the EITC that are not solely dependent on whether the EITC claimant does or does not have qualifying children.

Allowing Residents of Puerto Rico and American Samoa to Benefit from the EITC

Under current law, individuals who live in U.S. territories (CNMI,²⁰ American Samoa, the U.S. Virgin Islands (USVI), Guam, and Puerto Rico) cannot claim the federal EITC.

H.R. 4117 would require the Secretary of the Treasury to transfer revenue to Puerto Rico and American Samoa²¹ that would be equal to the total amount of EITC benefits Puerto Rican and American Samoan residents could claim if they were eligible for the credit. This provision would

¹⁸ Under this bill, EITC claimants would be able to choose the earnings definition—the current law definition or the modified definition that takes into account the dual-earner deduction—that would maximize their credit. Hence, tax filers would generally use this deduction if their combined income as a married couple put them in the phase-out income range of the credit.

¹⁹ Under current law, in 2014, if the married couple had a combined income of \$35,000, the EITC would be calculated as $\$3,305 - (15.98\% \times (\$35,000 - \$23,260))$. With the dual-earner deduction, the couple could reduce their earned income by 20% of \$10,000, or \$2,000. Hence, the EITC would be calculated as $\$3,305 - (15.98\% \times (\$33,000 - \$23,260))$.

²⁰ The Commonwealth of the Northern Mariana Islands.

²¹ This provision only applies to U.S. territories that do not have a mirror code tax system. A territory has a mirror-code tax system if the tax liability of the territory's residents is determined with reference to the U.S. Internal Revenue Code (IRC), with the territory's name substituted for the United States every place it appears in the IRC. Currently, of the U.S. territories, Puerto Rico and American Samoa do not use a mirror-code tax system.

not apply to the other U.S. territories (including CNMI, USVI, and Guam). Puerto Rico and American Samoa would be required to provide the U.S. Treasury with a plan for how it would distribute the aggregate funds. The legislation does not provide a method or formula that Puerto Rico and American Samoa must use when distributing this money to Puerto Rican and American Samoan residents.

Eliminating the Investment Income Test

Under current law, eligible EITC recipients cannot have investment income greater than \$3,350 in 2014. Investment income includes interest income (including tax-exempt interest), dividends, net rent, and royalties that are from sources other than the filer's ordinary business activity, net capital gains, and passive income.

H.R. 2116 would repeal this limitation.

Chairman Camp's Tax Reform Proposal

Among its many changes to the income tax code, the House Ways and Means Committee Chairman Camp tax reform proposal (hereinafter referred to as the "Camp proposal") would change the structure of and eligibility for the EITC. Specifically, the Camp proposal would reduce the amount of the EITC for most tax filers by reducing the maximum value of the credit and the credit rates, as well as by eliminating the expanded credit for families with three or more children.²² In addition, the Camp proposal would modify the age limit for the qualifying child for the EITC to under 18 years old, with no exception made for full-time students.

The changes made to the EITC under the Camp proposal, however, would occur in the broader context of comprehensive changes to a wide variety of family- and child-related tax provisions. Given the significant revisions made to the tax code by this proposal, an evaluation of the EITC in isolation would not accurately reflect how tax liabilities would change for tax filers under the proposal. For example, while the EITC is generally reduced in size, the child tax credit, standard deduction, and 10% tax bracket are all expanded. These legislative changes may offset or even exceed any reductions in the EITC for certain tax filers, especially those with children. Hence, some low-income workers who claim the EITC would see their tax liabilities fall under the Camp proposal, while others would see their tax liabilities increase.

The Joint Committee on Taxation found that beginning in 2017, tax filers with income under \$20,000—which would likely include many EITC recipients—would on average see a reduction in their taxes.²³ However, an analysis of the Camp proposal by the Tax Policy Center highlighted that the actual impact of the proposal on individual taxpayers would depend on their particular circumstances, including their income, number and age of any qualifying children (and whether they were college students or not), and filing status.²⁴

²² A detailed overview of the changes made to the EITC by the Camp proposal is available to congressional clients upon request.

²³ Joint Committee on Taxation, *Distributional Effects of the "Tax Reform Act of 2014,"* February 26, 2014, JCX-21-14, p. 2.

²⁴ See for example Figures 2, 3, and 4 in Jim Nunns, Amanda Eng, and Lydia Austin, *Description and Analysis of the Camp Tax Reform Proposal*, Tax Policy Center, July 8, 2014, <http://www.taxpolicycenter.org/UploadedPDF/413176-Camp-Plan-Description-and-Analysis.pdf>.

Appendix. Inflation Adjustments in the EITC and Legislative Proposals in the 113th Congress

Several parameters of the EITC are listed at statutory levels in the tax code and then adjusted annually for inflation using a cost-of-living adjustment (COLA) specified in Section (1)(f)(3) of the Internal Revenue Code (IRC). Under current law, the COLA for any year is the percentage (if any) by which the consumer price index (CPI) for the preceding calendar year exceeds the CPI for the calendar year, referred to as the “base year.” Hence, the inflation factor used to adjust statutory levels to 2014 levels is the ratio of the CPI for 2013 divided by the CPI for the base year. Different parameters of the EITC can have different base years.

Statutorily, the inflation adjustment for any calendar year is the average of the CPI²⁵ as of the close of the 12-month period ending on August 31 of such calendar year. Thus, the inflation adjustment for 2013 would be equal to the annual average of the CPI from September 2012 to August 2013.

**Table A-1. Inflation Adjustments Under Current Law
for EITC Parameters Which Are Adjusted Annually for Inflation**

	Earned Income Amount	Phase-Out Amount	Temporary Marriage Penalty Relief (2009-2017)	Permanent Marriage Penalty Relief (2018)	Excessive Investment Income
Statutory amount	0 children: \$4,220 1 child: \$6,330 2+ ^a : children: \$8,890	0 children: \$5,280 1 child: \$11,610 2+ ^a children: \$11,610	\$5,000	\$3,000	\$2,200
Base year for inflation adjustment	1995	1995	2008	2007	1995
Calculation used to calculate 2014 adjusted amounts	CPI 2013/ CPI 1995	CPI 2013/ CPI 1995	CPI 2013/ CPI 2008	NA (not in effect in 2014)	CPI 2013/ CPI 1995
Rounding	Nearest multiple of \$10	Nearest multiple of \$10	Nearest multiple of \$10	The statute is not clear ^b	Next lowest multiple of \$50
2014 inflation-adjusted amount	0 children: \$6,480 1 child: \$9,720 2+ ^a : children: \$13,650	0 children: \$8,110 1 child: \$17,830 2+ ^a children: \$17,830	\$5,430	NA	\$3,350

Source: IRC §32 and §1(f)(3) and Revenue Procedure 2013-35.

- The earned income amount and phase-out amount for taxpayers with two children and three or more children are identical. Hence, for brevity, these amounts are listed for families with “2+” children.
- The statute provides no information on how this figure would be rounded. This \$3,000 amount was first in effect in 2008 and was not inflation adjusted that year. In 2009, the higher \$5,000 amount went into effect and has been in effect since.

This report provides an overview of changes to the statutory amounts of the EITC for childless workers that are made by various bills introduced in the 113th Congress. However, these bills use

²⁵ The CPI is defined under current law as the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index, which is most consistent with the Consumer Price Index for calendar year 1986, shall be used. See IRC §(1)(f)(3).

different “base years” when adjusting parameters for inflation, like the earned income amount, phase-out amount, and marriage penalty relief. In addition, these bills are drafted in such a way that they could, if enacted in 2014, go into effect in different years. Hence, the first time these parameters would be adjusted for inflation may differ. It is unclear under the FY2015 Obama Administration proposal what the base year for inflation adjustments would be, and therefore it is not included in the table.

**Table A-2. Inflation Adjustments to EITC Parameters
under Select Legislative Proposals in the 113th Congress**

Parameter’s Inflation Adjustment Formula	H.R. 4117	H.R. 2116	S. 836	S. 2162
Earliest year legislative changes would be in effect if bill was enacted in 2014	2014	2015	2013	2015
Base Year for Parameter				
Earned income amount	2013	2012	2012	2014
Phase-out amount	2013	2012	2012	2014
Marriage penalty relief	2008	2009	2008	unchanged from current law
Hypothetical Formulas Used to Calculate Adjusted Levels for 2016 Income Tax Returns if Legislation Became Law				
Earned income amount	CPI 2015/ CPI 2013	CPI 2015/ CPI 2012	CPI 2015/ CPI 2012	CPI 2015/ CPI 2014
Phase-out amount	CPI 2015/ CPI 2013	CPI 2015/ CPI 2012	CPI 2015/ CPI 2012	CPI 2015/ CPI 2014
Marriage penalty relief	CPI 2015/ CPI 2008	CPI 2015/ CPI 2009	CPI 2015/ CPI 2008	CPI 2015/ CPI 2008

Source: IRC §32 and §(1)(f)(3) and H.R. 4117, H.R. 2116, S. 836, S. 2162.

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